# No. 82-1188

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1982

ROBERT KERREY, Governor of The State of Nebraska, *et al.*,
*Appellants,*

vs.

WOMENS SERVICES, P.C., *et al.*,
*Appellees,*

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ROBERT KERREY, Governor of The State of Nebraska, *et al.*,
*Appellants,*

vs.

LADIES CENTER, NEBRASKA, INC., *et al.*,
*Appellees,*

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ROBERT KERREY, Governor of The State of Nebraska, *et al.*,
*Appellants,*

vs.

WOMENS SERVICES, P.C., *et al.*,
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On Appeal from The United States Court of Appeals
for the Eighth Judicial Circuit

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## MOTION AND BRIEF OF APPELLEES TO DISMISS APPELLANTS' "JURISDICTIONAL STATEMENT" AND TO AFFIRM THE JUDGMENTS BELOW

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Come now Appellees and pursuant to Rule 16.1(a) of this Honorable Court move to dismiss the "Jurisdictional Statement," heretofore filed by Appellants for failure to conform to Rule 33.2(a)(4) of this Honorable Court.

Come now Appellees and pursuant to Rule 16.1(c) and (d) of this Honorable Court move to affirm the PER CURIAM decision of October 14, 1982, as unanimously rendered by the United States Court of Appeals for the Eighth Judicial Circuit in Appeal No. 82-1786, reported at 690 F.2d 667 (8th Cir. 1982), the Honorable Donald R. Ross, Theodore McMillian and Richard Sheppard Arnold, Circuit Judges, presiding.

Said named Appellees move to affirm on the grounds that it is manifest that the federal questions raised by Appellants are so unsubstantial as to need no further argument nor adjudication; on the grounds that the judgments below rest upon adequate non-federal bases; and on the grounds that said federal questions, even if substantial, have been expressly, repeatedly, wisely and convincingly decided by this Honorable Court, by other Circuit Courts of Appeals and by other District Courts in a manner wholly consistent with the opinion below.

WHEREFORE, said named Appellees pray this Honorable Court to dismiss Appellants' "Jurisdictional Statement" and to affirm the decision herein appealed.

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## BRIEF OF APPELLEES IN SUPPORT OF THEIR MOTION TO DISMISS APPELLANTS' "JURISDICTIONAL STATEMENT" AND TO AFFIRM THE JUDGMENTS BELOW

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## ARGUMENT

**This Appeal Fails To Raise A Substantial Federal Question As To The Appropriate Legal Standard Of Review Under The Federal Constitution Of Statutes Regulating The Performance Of Abortions.**

The appropriate legal standard for constitutional review of abortion regulation has been clearly established by this Honorable Court in *Roe* v. *Wade*, 410 U.S. 113 (1973) and *Doe* v. *Bolton*, 410 U.S. 179 (1973) and their progeny.

The various Circuits have been uniformly consistent in the interpretation and application of such standards. See: *Baird* v. *Department of Public Health of The Commonwealth of Massachusetts*, 599 F.2d 1098, 1102 (1st Cir. 1979); *Poe* v. *Gerstein*, 517 F.2d 787, 791 (5th Cir. 1975), *affirmed*, 428 U.S. 901 (1976); *Mahoning Women's Center* v. *Hunter*, 610 F.2d 456, 459 (6th Cir. 1979), *vacated and remanded on other grounds*, 447 U.S. 918 (1980); *Charles* v. *Carey*, 627 F.2d 772, 777 (7th Cir. 1980); *Reproductive Health Services* v. *Freeman*, 614 F.2d 585, 594 (8th Cir. 1980), *vacated and remanded on other grounds*, 449 U.S. 809 (1980).

Appellants raise before this Honorable Court one issue; their claim that this Honorable Court in *H.L.* v. *Matheson*, 450 U.S. 398 (1981) reversed eight years of holdings as to the standards of constitutional review for restrictive abortion legislation. Numerous Circuit Courts have reaffirmed the strict teachings of *Roe* v. *Wade*, 410 U.S. 113 (1973), subsequent to this Honorable Court's opinion in *H.L.*, *supra*. See *Deerfield Medical Center* v. *City of Deerfield Beach*, 661 F.2d 328 (5th Cir. 1981) (decided eight months subsequent to *H.L.*) (reaffirming the standards of *Roe* at 334-35); *Akron Center for Reproductive Health, Inc.* v. *City of Akron*, 651 F.2d 1198, (6th Cir. 1981), *cert. granted*, 50 U.S.L.W. 3934 (May 24, 1982)

(noting *H.L.* at 1205-06) (reaffirming the standards of *Roe* at 1202-03); *Scheinberg* v. *Smith*, 659 F.2d 476 (5th Cir. Unit B. 1981) (noting *H.L.* at 485) (reaffirming the standards of *Roe* at 482-83); and *Planned Parenthood Association — Chicago Area* v. *Kempiners*, 531 F.Supp. 320 (N.D.Ill. 1981) (noting *H.L.* at 328) (reaffirming the standards of *Roe* at 327-29).

As the Eighth Circuit below determined:

> The court in *Ashcroft* [*Planned Parenthood Association of Kansas City, Missouri, Inc.* v. *Ashcroft*, 655 F.2d 848 (8th Cir. 1981), *cert. granted*, 50 U.S.L.W. 3934 (May 24, 1982)] discussed the Supreme Court's opinion in *H.L.* v. *Matheson* and * * * did not read *H.L.* v. *Matheson* as imposing a new standard of review of statutes which regulate abortion.

(App. 87; 690 F.2d at 668).

## CONCLUSION

Appellants would have this Honorable Court believe that they alone have divined the hidden, crytic message of *H.L.*; which they maintain reverses outright the standard of strict scrutiny imposed by *Roe, Doe* and their progeny. A radical, yet surreptitious, message that Appellants apparently would maintain was intentionally imposed by a majority of this Honorable Court in a few brief words, overlooked and concurred in by the dissent in *H.L.* without a mention of the same, and ignored by commmenting legal scholars and by numerous courts, *supra*. Included in those who have apparently missed this purported substantive point in *H.L.* would be this Honorable Court; a point that Appellants maintain they so perceptively and intuitively have grasped. The spurious issue herein raised by Appellants does not warrant plenary review by this Honorable Court.

WHEREFORE, for the reasons, law, equity and argument above presented, Appellees respectively pray that the judgment of the Circuit Court below be affirmed, that Appellees be awarded their attorneys' fees and costs incurred by reason of this appeal, that all costs herein be assessed against Appellants and for such other orders as this Honorable Court deems appropriate.

Respectfully submitted,

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